

1 KAREN A. OVERSTREET
Bankruptcy Judge
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5 UNITED STATES BANKRUPTCY COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 In re)
9) Chapter 13
JAMES C. CROWE, and)
JOY K. CROWE,)
10) Bankruptcy No. 02-21809
11 Debtors.)
12) **MEMORANDUM DECISION**
13) **AND ORDER ON**
14) **OBJECTIONS TO CLAIMS**
15)
16 _____

17 This matter came before the Court on the debtors' objections
18 to ten proofs of claim filed in the above case. These objections
19 were filed on November 4, 2004, and were directed at nearly every
20 unsecured claim filed in the case. Two creditors, eCAST
21 Settlement Corporation ("eCast")¹ and B-Line, LLC,² responded to
22 the debtors' objections. The debtors promptly withdrew their
23 objections to the claims of eCast and B-Line, LLC, so those
24 claims are not at issue here.³ As to each of the five remaining

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26 ¹ eCast responded as the assignee of Sears Roebuck & Co.
27 (Claim No. 2), MBNA America Bank, N.S. (Claim No. 6), JC Penney
28 (Claim No. 8), and Home Depot (Claim No. 12).

² B-Line, LLC responded as assignee of Bank One Delaware,
f.k.a. First U.S.A. (Claim No. 13).

³ In addition, counsel for the debtors reduced his fee
application by \$250 for each claims objection that was withdrawn.
See Declaration of No Objection filed December 14, 2004.

1 claims objections, the debtors submitted a declaration of no
2 response and a proposed order disallowing the claim on the ground
3 that no response to the objection had been filed. The proposed
4 orders bar each creditor from filing any supplemental claim, but
5 insulate each creditor from having to return any payments already
6 made to them by the Chapter 13 trustee under the debtors'
7 confirmed Chapter 13 plan. For the following reasons, the Court
8 will deny the debtors' request to disallow these claims, with one
9 exception.

10 **I. BACKGROUND**

11 The debtors commenced this case under Chapter 13 of the
12 Bankruptcy Code⁴ on September 27, 2002, and confirmed their
13 Amended Chapter 13 plan on December 6, 2002. The confirmed plan
14 states that the anticipated dividend to unsecured creditors will
15 be 74% of the amount of their claims based upon a liquidation
16 analysis showing \$23,380.23 in funds available for unsecured
17 creditors. On May 2, 2003, the Chapter 13 trustee filed his
18 Report of Filed Claims, showing every claim filed in the case as
19 of that date. Subsequent to plan confirmation, the debtors filed
20 no claims objections until those at issue here were filed.

21 On October 28, 2004, the debtors filed a Motion to
22 Borrow/Incur Indebtedness to refinance the deeds of trust on
23 their principal residence and pay off the confirmed plan. The
24 proposed closing statement attached to the motion showed that the

25 ⁴ Unless otherwise indicated, all Chapter, Section and Rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*
27 and to the Federal Rules of Bankruptcy Procedure, Rules 1001 *et*
28 *seq.*

1 debtors would receive \$21,293 from the refinance, which sum was
2 to be paid to the Chapter 13 trustee. The motion recited that
3 the refinance would enable the debtors to increase the dividend
4 to unsecured creditors to 100% of those claims. The Court
5 approved the Motion to Borrow, the refinance was completed, and
6 the proceeds were paid to the Chapter 13 trustee. Six days after
7 the Court approved the refinance, the debtors filed objections to
8 all but two of the unsecured claims filed in their case. The two
9 claims to which the debtors did not object total \$434.78.

10 eCast filed a lengthy response to the objections on the
11 grounds that the objections were untimely, that the claims
12 complied with the requirements of Bankruptcy Rule 3001(c), and
13 that the claims should be allowed pursuant to Section 502(b).
14 Although in response to eCast's submission the debtors promptly
15 withdrew their objections to eCast's claims, the Court has
16 considered the response filed by eCast and its request that the
17 Court clarify its decision in *In re Henry*, 311 B.R. 813 (Bankr.
18 W.D. Wash. 2004).

19 **II. DISCUSSION**

20 **A. Clarification and Limits of *Henry*.**

21 This Court issued the *Henry* decision in an effort to
22 establish reasonable and cost-effective guidelines for dealing
23 with small proofs of claim, including credit card claims, in
24 Chapter 13 cases. The hope was that by requiring creditors with
25 small claims to comply with Bankruptcy Rule 3001(c) through a
26 relatively minimal production of documents in support of their
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1 claims, the burden on debtors to verify the accuracy of those
2 claims would be lessened and fewer costs would be incurred
3 overall by both creditors and debtors in the allowance process.
4 Subsequent to *Henry*, however, reported cases describe creditors
5 who fight with even more zeal to avoid having to file even
6 minimal support for their claims and debtors who have taken up
7 *Henry* as a sword to disallow perfectly legitimate unsecured
8 claims when there is no reasonable justification for disputing
9 the claims. Now, courts around the country struggle with time-
10 consuming litigation over issues that should be subject to
11 reasonable resolution by the parties involved. See, e.g., *Dove-*
12 *Nation v. eCast Settlement Corp.*, 318 B.R. 147 (8th Cir. BAP
13 2004); *In re Blue*, 2004 WL 1745786 (N.D. Ill. 2004); *In re*
14 *Mazzoni*, 2004 WL 2966908 (Bankr. D. Kan. 2004); *In re Cluff*, 313
15 B.R. 323 (Bankr. D. Utah 2004); *In re Hughes*, 313 B.R. 205
16 (Bankr. E.D. Mich. 2004); *In re Kemmer*, 315 B.R. 706 (Bankr. E.D.
17 Tenn. 2004); *In re Shank*, 315 B.R. 799 (Bankr. N.D. Ga. 2004).
18 This case is a good example of *Henry* run amok, and the Court
19 writes for the purpose of slowing the stampede.

20 In *Henry*, this Court held that the failure to comply with
21 Rule 3001(c) by attaching the writing upon which the claim is
22 based negates the *prima facie* validity of the claim under
23 Bankruptcy Code § 502(a). See *In re Consolidated Pioneer*
24 *Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995); *In re Stoecker*,
25 143 B.R. 879, 883 (N.D. Ill. 1992); *In re Petrich*, 43 F.2d 435,
26 437 (S.D. Cal. 1930); *In re Lindell Drop Forge Co.*, 111 B.R. 137,
27 142-43 (Bankr. W.D. Mich. 1990). This Court also held that a

1 credit card debt is a claim based upon a writing and that to
2 maintain *prima facie* validity, a creditor should attach to its
3 proof of claim form or file in response to a claims objection
4 (i) a sufficient number of monthly account statements to show how
5 the total amount asserted has been calculated, and (ii) a copy of
6 the agreement authorizing the charges and fees included in the
7 claim. Finally, this Court held in *Henry* that in the absence of
8 that minimum evidentiary presentation, the creditor's claim could
9 be disallowed. In *Henry*, each of the creditors was given an
10 opportunity to amend its claim by submitting additional
11 documentation.

12 In this case, each of the debtors' objections states:

13 YOU MAY AVOID THIS HEARING by providing (1) a
14 minimum of 12 months of account statements from
15 the debtor's alleged account, (2) a copy of the
16 contract obligating the debtor to [the creditor],
17 (3) proof of a valid assignment (if applicable),
18 and (4) evidence of compliance with the Truth in
19 Lending Act, 16 U.S.C. §1692 (a signed application
20 by the debtor), PRIOR to the response date
21 indicated below.

22 This statement requires significantly more than the Court
23 required in *Henry*. Nothing in *Henry* requires a creditor to
24 attach to its proof of claim 12 months of account statements, nor
25 does *Henry* require a creditor to submit proof that it has
26 complied with the Truth in Lending Act.

27 Further, nothing in *Henry* eliminated a creditor's right to
28 submit a summary of the debt when the documentation supporting
the debt is voluminous. Paragraph 9 of Bankruptcy Official Form
10 (04/04) (Proof of Claim Form) advises creditors to "Attach

1 copies of supporting documents" and further that "[i]f the
2 documents are voluminous, attach a summary." The instructions
3 for completing the proof of claim form provide additional advice
4 to creditors:

5 Creditors must attach to the proof of claim
6 form copies of any documents showing that the
7 debtor owes the debt claimed or, if the
8 documents are too lengthy, a summary of those
9 documents....It is essential that a creditor
10 include all documents relating to the claim,
11 not just those that fit the categories
12 provided in this section of the form. For
13 some claims, a simple statement of account
14 may be enough. Other claims may require
15 extensive documentation.

16 It is difficult to see how the process could be simpler, yet the
17 controversy over small claims continues.

18 Decisions rendered after *Henry* affirm that a creditor may
19 attach a summary where supporting documents are voluminous. *In*
20 *re Kemmer*, 315 B.R. at 715; *In re Dove-Nation*, 318 B.R. at 151.
21 *In re Cluff*, the court even articulated guidelines for the
22 form of the summary: (i) it should include the amount of the
23 debt(s), (ii) it should identify the name and account number of
24 the debtor, (iii) it should be in the form of a business record
25 or some other equally reliable format, and (iv) if the claim
26 includes charges such as interest, late fees and attorneys' fees,
27 the summary should break down each of those charges by category.
28 *Cluff*, 313 B.R. at 335. The filing of a summary, however, does
not relieve a creditor of its obligation to provide all documents
supporting the claim to the debtor upon request. *In re Shank*,
315 B.R. at 816; *In re Kemmer*, 315 B.R. at 715; *In re Cluff*, 313

1 B.R. at 335-36. Nor does the filing of a summary negate the
2 requirement that a creditor check the box in paragraph 4 of the
3 proof of claim form if the claim includes interest or other
4 charges in addition to the principal amount of the claim and to
5 attach, if applicable, an "itemized statement of all interest or
6 additional charges."

7 The Court has not reviewed each claim at issue in this case
8 to determine if a proper summary or documentation complying with
9 *Henry* has been filed because this Court concludes that the claims
10 objections filed by the debtors should be denied as untimely.

11 **B. Application of *Henry* to the Facts.**

12 The Court must determine the debtors' objections to the
13 following claims:

Creditor	Claim No.	Amount	Date Filed
First National Bank of Omaha	9	\$2,031.35	10/16/02
First North American Bank	1	\$1,026.72	10/10/02
Providian National Bank	5	\$4,692.26	10/17/02
Qualstar Credit Union	15	\$3,453.44	1/15/03
Citifinancial	16	\$3,143.71	3/10/03

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20 These claims were filed more than a year before *Henry* was even
21 issued. Several of the proof of claim forms used are an earlier
22 version of Official Bankruptcy Form No. 10 and do not include any
23 box in paragraph 4 to check regarding interest and fees, and
24 there is no paragraph 9 or any reference to attaching supporting
25 documents or a summary. With the sole exception of the Qualstar
26 claim, the debtors actually scheduled the claims in an amount in
27 excess of the amounts stated in the creditors' proofs of claim.

1 None of the claims are listed as disputed in the schedules.⁵

2 The debtors' sole objection to the claims of First National
3 Bank of Omaha, First North American Bank, Providian National
4 Bank, and Qualstar Credit Union is that the claims do not comply
5 with *Henry*. The Court concludes that on the facts of this case,
6 the debtors' objections are untimely. The Chapter 13 Trustee's
7 Report of Filed Claims, showing each of these claims, was entered
8 on May 2, 2003, and was served on the debtors. A statement in
9 that report clearly advises the debtors that their objection to
10 any of the claims had to be filed within 90 days after May 2,
11 2003.⁶ Accordingly, the time to object to the claims has passed
12 and the debtors have offered no reason why the claims objections
13 at issue were filed nearly two years after plan confirmation and
14 more than a year after expiration of the deadline for claims
15 objections.

16 The debtors have raised a legitimate objection under
17 Bankruptcy Code § 502(b) to Claim No. 16 of Citifinancial. That
18 claim was filed after the bar date. 11 U.S.C. § 502(b)(9). In
19 the case of a late filed claim, our local rules put the burden on
20 the creditor to move for allowance of the claim within 20 days
21 after the Chapter 13 Trustee's Report of Filed Claims is
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25 ⁵ Instead, each of the claims is listed as "unliquidated,"
which clearly they are not.

26 ⁶ See Local Rule 3007-1(b)(i), W.D. Wash. Bankr.
27 (establishing a 90 day deadline for the filing of claims
objections in the absence of a showing of good cause).

1 entered.⁷ Citifinancial failed to comply with that rule and to
2 respond to the debtors' objection to the claim. Without
3 resolving the question of whether a late-filed claim should be
4 allowed in a Chapter 13 proceeding, *see In re Gullatt*, 169 B.R.
5 385 (M.D. Tenn. 1994), the Court will disallow the Citifinancial
6 claim because the creditor failed to comply with the local rules
7 and to respond to the debtors' substantive objection.

8 CONCLUSION

9 The debtors sought and received court approval to pay all of
10 their creditors in full by refinancing their home. With the
11 prospect of refinanced equity in their home, the debtors then
12 sought to avoid payment to all but two of their unsecured
13 creditors through form objections that are untimely and which
14 seek to impose on each creditor a burden not imposed by *Henry*.
15 Having represented to creditors in their motion for authority to
16 refinance their home that the purpose was to complete the plan
17 and pay creditors in full, the debtors should do just that: pay
18 creditors in full. Accordingly, the Court will disallow the
19 claim of Citifinancial and will deny the debtors' objections to
20 the remaining four claims.

21 While the attempt through *Henry* to simplify the small claims
22 process before this Court appears to have failed, the Court has
23 the continued expectation that both debtors and creditors will
24 act reasonably in that process. Creditors should be mindful that

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26 ⁷ Local Rule 3007-1(b)(ii), W.D. Wash. Bankr. (requiring a
27 motion to allow a late filed claim within 20 days after notice
from the Chapter 13 trustee).

1 their claims are signed under penalty of criminal sanctions and
2 should take seriously the requirement that they have sufficient
3 proof of what is owed by a debtor and how the debt is calculated.
4 Debtors should file objections to claims when they have a
5 legitimate quarrel with the existence or amount of the debt and
6 when the attorneys' fees to be incurred in the process do not
7 exceed the amount of the dividend to be saved if the objections
8 are successful. If these obligations are ignored by the parties,
9 the cost of the small claims process in Chapter 13 cases will
10 continue to be a burden on the system and will reduce the overall
11 distributions to creditors.

12 **ORDER**

13 For the foregoing reasons, it is hereby ORDERED that the
14 debtors' objections to the claims of First National Bank of Omaha
15 (Claim No. 9), First North American Bank (Claim No. 1), Providian
16 National Bank (Claim No. 5), and Qualstar Credit Union (Claim
17 No. 15) are DENIED. The debtors' objection to the claim of
18 Citifinancial (Claim No. 16) is sustained and that claim is
19 DISALLOWED.

20 DATED this 18th day of January, 2005.

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23 KAREN A. OVERSTREET
UNITED STATES BANKRUPTCY JUDGE